who was detained there for several days thereafter. It was necessary for the parties to remain on the wharf, watching for the boat during the night, in order to get passage, and the wharf was a most inclement place at that time; the night being unusually cold, and the situation hard for the plaintiff's wife, from which she suffered pain and incurred injury. The jury on these facts awarded exemplary damages, and the Supreme Court sustained the verdict. This decision seems to have been substantially correct. A verdict awarding damages to the extent of what the plaintiff or his wife might have earned in the time would surely be nothing less than an insult.

In an action for damages by a passenger on a steamboat against the owner of the boat for injuries received by the explosion of a boiler, the plaintiff is entitled to recover for his bodily pain and suffering: *Swarthout* v. *The New Jersey Steamboat Company*, 46 Barb. 222. There can be no doubt of the correctness of the rule here laid down. The courts all agree in this.

I. F. R.

United States Circuit Court, District of Louisiana.

THE CITIZENS' BANK ET AL. *v.* OBER ET AL.

IN RE YORK & HOOVER, BANKRUPTS.

The general rule in the computation of time within which an act is to be done is to exclude the first day and include the last.

This is the rule prescribed by the Bankrupt Act, unless the last day happens to fall on Sunday, in which case that day is excluded also. In all other cases Sundays are counted as other days.

A proceeding in bankruptcy from the filing of the petition to the discharge or refusal to discharge the bankrupt is a single case, and is subject to appeal or writ of error as such, but there may be a large number of cases or questions arising in the course of it, and these may be the subject of review by the Circuit Court by writ of error or appeal or petition to review, according to their nature.

If the matter is a suit at law or in equity, or a dispute by the assignee of a creditor's claim allowed, or a claim by a creditor wholly or in part rejected, then it must be brought before the Circuit Court by writ of error or appeal.

But all other cases or questions arising in the progress of a case in bankruptcy fall within the supervisory jurisdiction of the Circuit Court, and must be brought before it by bill or petition to review.

The settlement of the status of a creditor's claim as to priority with respect to other liens is not the allowance or rejection of the claim meant by sect. 8, by which an appeal is given, and the proper mode of bringing such a matter before the Circuit Court is by petition to review.

An assignee made a sale of real estate of the bankrupt at which certain creditors purchased. The District Court confirmed the sale against the exceptions of other creditors, and made an order as to the priority of certain liens. *Held*, that this was a proceeding within the supervisory power of the Circuit Court, and should be brought before it by petition to review.

THIS was a petition of review of certain proceedings in bankruptcy in the District Court of Louisiana. Ober, Atwater & Co. claimed first mortgages on two plantations surrendered by the bankrupts, York & Hoover. They obtained an order for the sale of them, and purchased both at the assignee's sale. They applied for a rule to confirm the sale, and asked that the proceeds of sale be applied to the extinguishment of their mortgages. The Citizens' Bank and other creditors answered the rule, and alleged that the mortgage of Ober, Atwater & Co. on one of the plantations, had been extinguished, and on the other it was only second in rank. They further alleged that Ober, Atwater & Co. had influenced a competitor not to bid for one of the plantations, and had also made overtures to the solicitor of the assignee, calculated to give them an unjust preference over other creditors with respect to both. The District Court made the rule absolute, and the Citizens' Bank appealed, and also joined the other creditors in a petition of review to the Circuit Court.

Hyams & Jones, and *Randolph, Singleton & Browne*, for appellants, cited *Judd* v. *Fulton*, 10 Barb. 117; *Snyder* v. *Warren*, 2 Cowen 518; 6 Id. 605; Broom's Legal Maxims 22; *Wathen* v. *Beaumont*, 11 East 271; *Story* v. *Elliott*, 8 Cowen 28; *McGill* v. *The Bank of U. S.*, 12 Wheat. 511; 2 Hill 375; *Long* v. *Hughes*, 1 Duvall (Ky. Rep.) 387; *Fowler* v. *Smith*, 1 Rob. 448; *Jones* v. *Boyle*, 14 La. 268; *Gorham* v. *De Armas*, 7 Martin 359; *State* v. *Boyle*, 9 La. Ann. 371.

R. & H. Marr, for appellees.

WOODS, J.—York and Hoover having been declared bankrupts by the adjudication of the District Court, E. E. Norton, their assignee, by H. D. Stone, his solicitor, filed a petition in said District Court, sitting as a Court of Bankruptcy, praying for an order to sell two plantations, the property of bankrupts. An order of sale was obtained, and under it a sale of the plantations, called respectively "White Hall" and "Home," was made on the 16th February 1869, and Ober, one of the creditors, became the purchaser thereof. On the — day of February 1869 C. H. Slocomb, one of the creditors of York & Hoover, filed his petition in the District Court, setting forth the fact of the sale to Ober, that no deed had, at the time of filing his petition, been made by Norton,

the assignee, to Ober, charging that the sale was fraudulent, and therefore illegal and void, and praying, on behalf of himself and other creditors of York & Hoover, that Ober, Norton, the assignee, and others, show cause why the sale should not be set aside.

According to the prayer of this petition, an order was made as prayed for, and the parties named were cited to show cause why the prayer of the petition should not be granted.

The minutes of the District Court of the date of March 19th 1869 show the following entry: No. 603. Matter of York & Hoover. On motion of H. D. Stone, attorney of E. E. Norton, and upon showing to the court that a sale was made of two plantations surrendered herein, namely, the "Home" and "White Hall" plantations, situated in the parish of Concordia (here follows a description of the two plantations), on the 16th of February 1869, and upon further showing to the court that the following-named parties appear to have had mortgages, privileges, claims, and liens upon said plantations (here follow the names of some fifty creditors), it is ordered that the parties above named, and the bankrupts, and all persons interested herein, show cause, on the 1st day of May 1869, at 11 o'clock A. M., why said sale should not be confirmed, and at the same time the priority and rank of said mortgages, privileges, liens, and claims be fixed and adjudicated; that, as so adjudicated, the same be directed to be paid; that notice thereof be given by publication in the New Orleans Republican for three days, the last publication to be at least ten days before such hearing.

After this order to show cause was made by the court, but precisely when, we are unable to ascertain from the papers submitted to us, the Citizens' Bank of Louisiana, and a large number of other creditors of York & Hoover, filed an exception to the rule, in which they set out various grounds why the sale should not be confirmed, and conclude by praying that the application of the assignee for the confirmation of the sale be refused and rejected, and that said sale be set aside and annulled.

On the day fixed for the hearing of the rule, the matter of the rule and exception thereto were referred by the District Court, sitting in bankruptcy, to a commissioner to ascertain and report upon the validity of the sale and the priority of the claims; and subsequently said commissioner reported that there was no fraud

or collusion in making the sale, and that certain mortgages held by Ober, Atwater & Co. on said White Hall and Home plantations were the first and best liens on those places respectively, and that the amount due on them was more than the proceeds of the sale.

Thereupon it was ordered by the court, on motion, that the report of the commissioner, if not opposed within three days, be approved and homologated.

Exceptions were filed to the report of the commissioner, and afterwards, to wit, on 11th January 1870, the District Court confirmed the sale, but reserved the question of priority of mortgages and liens for further argument.

On the 31st of March 1870, the District Court declared that the mortgages of Ober, Atwater & Co. were the first lien on said plantations and on the proceeds of the sale thereof, and directed them to be paid in preference to any of the other mortgages set up in the opposition of the creditors of York & Hoover, and directed the money arising from the sale to be paid to Ober, Atwater & Co.

On the 5th of April 1870, an application was made for a rehearing on the matters embraced in the decision of the court, and on the 27th of April a rehearing was refused.

The Citizens' Bank and other creditors of York & Hoover, on the 9th of May, took an appeal from the order of the court of March 31st, which in effect dated from the refusal for rehearing on the 27th of April. And on the said 9th of May said Citizens' Bank and other creditors filed in this court a petition, invoking the supervisory jurisdiction of this court, under the 2d section of the Bankrupt Act, and praying that the orders and decrees of the District Court above recited be set aside, the sale of said plantations declared null and void, and the same ordered to be resold, and that their mortgages be decreed to have priority.

The case has been heard upon two questions:—

1. Whether the appeal was taken within the time limited by law; and,

2. Whether the case presented by the petition of the Citizens' Bank and others was a case for the supervisory jurisdiction of the court, and whether the court has jurisdiction thereof.

1. As intimated during the argument, we are of opinion, that if this were a proper case for appeal, the appeal was taken too late;

if Sundays are counted, the delay of ten days allowed for the appeal had expired before the appeal was taken: unless Sundays are expressly excepted in the statute, they are to be counted; the language of the 8th section of the Bankrupt Act is, "no appeal shall be allowed from the District to the Circuit Court, unless it is claimed and notice thereof given to the clerk, &c., &c., within ten days after the entry of the decree or decision appealed from." The rule for computing the number of days within which an appeal is allowed, is expressly declared by the 48th section of the Bankrupt Act, as follows: "In all cases in which any particular number of days is prescribed by this act, &c., &c., for the doing of any act, the same shall be reckoned in the absence of any expression to the contrary, exclusive of the first and inclusive of the last day, unless the last day shall fall on Sunday, in which case the time shall be reckoned exclusive of that day also." The fair and, as it seems to us, unavoidable inference is, that where Sunday is not the last day, it is not to be excluded. Applying this rule, and excluding the 27th of April, the day on which the decision was signed, the delay for appeal in this case expired with the 7th of May; the appeal not having been taken till the 9th, it was two days too late.

2. The other question presented is, whether this is a proper case for the supervisory jurisdiction of the court.

By the 2d section of the Bankrupt Act it is provided that the Circuit Courts, in the districts where proceedings in bankruptcy are pending, shall have a general superintendence and jurisdiction of all cases and questions arising under this act; and, except where special provision is otherwise made, may, upon bill, petition, or other proper process of any party aggrieved, hear and determine the case as a court of equity.

"The only construction which gives due effect to all parts of this section is that which, on the one hand, excludes from the category of general superintendence and jurisdiction of the Circuit Court, the appellate jurisdiction defined by the 8th section; and on the other, brings within that category all decisions of the District Court or district judge at Chambers, which cannot be reviewed upon appeal or writ of error under the provisions of that section:" CHASE, C. J., *In re Alexander*, 8 Am. Law Reg. 423.

By the 8th section of the act it is provided that appeals may be taken from the District to the Circuit Courts in all cases in equity,

and writs of error may be allowed to the said Circuit Courts from said District Courts, in cases at law under the jurisdiction created by the Bankrupt Act, when the debt or damages claimed amount to more than $500; and any supposed creditor whose claim is wholly or in part rejected, or an assignee who is dissatisfied with the allowance of a claim, may appeal. Now, according to the decision of Chief Justice CHASE, just quoted, unless this case falls under one of the classes provided for in this section, it is a proper case for the supervisory jurisdiction of the court.

1. It is not the case of an assignee who is dissatisfied with the allowance of a claim.

2. It is not the case of a supposed creditor, whose claim has been wholly or in part rejected. The claims of these petitioning creditors, so far as the record shows, have all been allowed in full. It is true, the court has decided that their claims are not entitled to priority, and that other creditors are, but this is not a rejection of their claims. A creditor's claim is the debt due from the bankrupt to him, and the question of priority of payment is one totally distinct from the claim or debt. We think this is clear from the 1st section of the act which extends the jurisdiction of the court *a.* to all cases and controversies between the bankrupt and any creditor who shall claim any debt or demand under the bankruptcy; *b.* the collection of the assets; *c.* the ascertainment and liquidation of liens, &c.; *d.* the adjustment of the various priorities and conflicting interests of all parties. Here is an evident distinction made between the claim of a debt or demand against the bankrupt and priority as to other creditors. A claim of priority is not a claim asserted against the bankrupt, but a right asserted against other creditors.

3. That the matter decided by the District Court on March 31st is not a case at law in which a writ of error would lie; this is clear and is not disputed.

4. It remains then to consider whether it was a case in equity in which an appeal might be taken. The phrase case in equity, in the 8th section, in our view, means a suit in equity.

It would seem hardly necessary to cite authority to show what a case or suit in equity is. Blackstone says: "The first commencement of a suit in chancery is by preferring a bill to the Lord Chancellor, in the style of a petition, humbly complaining, showeth to your lordship, your orator," &c. This is in the nature

of a declaration at common law, or a libel and allegation in the spiritual courts, setting forth the circumstances of the case at length, and for that your orator is wholly without remedy at the common law; relief is therefore prayed at the chancellor's hands, and also process of subpœna against the defendant to compel him to answer, under oath, all the matter charged in the bill. The bill must call all the necessary parties, however remotely concerned in interest, before the court—must be signed by counsel.

The 7th Equity Rule, as prescribed by the Supreme Court of the United States, provides that the process by subpœna shall constitute the proper mesne process in all suits in equity to require the defendant to appear and answer the exigency of the bill. Rule 12 provides that whenever a bill is filed the clerk shall issue process of subpœna thereon, which shall be returnable into the clerk's office the next rule-day, or the next rule-day but one at the election of the plaintiff, occurring after twenty days from the issuing thereof.

It is further provided in the equity rules that the appearance-day shall be the rule-day to which the subpœna is made returnable, provided the defendant has been served with process twenty days before that day; otherwise his appearance-day shall be the next rule-day succeeding the rule-day when the process is returnable. And it is made the duty of defendant to file his plea, answer, or demurrer to the bill on the rule-day next succeeding his appearance. From what has preceded, it will be seen what is a case in equity, how it is instituted, and how the parties are brought into court, and when they are required to answer.

If we decide that the case before the court is not one for its revisory jurisdiction, we in effect decide that the matter which was passed on by the District Court on March 31st, was a case in equity. In other words, that a mere motion entered on the minutes of the court, not verified by affidavit, without a prayer for relief, without a prayer for process, is a bill in equity; that a notice published three times in a newspaper is service of process, and brings parties into court as if served with a subpœna in chancery, and that a decree rendered upon such rule, where only a portion of the parties referred to in the rule make any appearance whatever, where only a part of them file any response to the motion, and that in the way of an exception and not sworn to, where no decrees *pro confesso* are taken against those who do not

appear, is a final decree in a case in equity, from which, under the Judiciary Act, an appeal lies to the Circuit Court; the mere statement of the proposition is its own refutation. Nor do we think the case made by the petition of Slocomb, even if it was held to give character to the proceeding and decision which petitioning creditors seek to review, is any more of a case in equity than the motion of the assignee Norton by his solicitor Stone. There is scarcely anything in the petition which assimilates it to a bill in equity. It is in fact nothing more than a motion in writing. It simply prays that said Ober, the said assignee, and said Girardy & Co., show cause on a certain day why the said sales should not be set aside as void, and until the hearing, that the parties named be enjoined from taking any steps towards perfecting said sales. Only three or four of the persons interested in the question are named in the petition—the great mass of them are left out entirely: no prayer of process, no demand for answers under oath, no service of process, and in fact scarcely any of the common incidents of a bill in equity are to be found in the petition. To call it a bill in equity, or the proceeding a case in equity, it seems to us, is an entire misapprehension of the meaning of the term.

But it is insisted that the setting aside a sale for fraud, and determining the priorities of liens, are matters of purely equitable cognisance, and, therefore, the proceeding sought to be reviewed is a case in equity from which appeal lies.

Courts of law frequently pass upon questions purely equitable, on motion or rule, but the nature of the question has never been held to make such motion or rule a case in equity. It is a very common practice for courts, on motion, to set aside sales made by a sheriff on execution, on account of some fraud or unfairness on the part of the sheriff or purchaser; yet, he would be a bold man who would insist that such a motion was a case in equity. When money is brought into court, the proceeds of a sale on execution, courts of law do not hesitate, on motion, to direct how the money shall be distributed, assuming to pass upon the priorities of claimants to the fund; yet it has never been supposed that by so doing they were rendering a decree in chancery, or that the motion to distribute the fund according to the rights of the parties made a case in equity. These two things—passing upon the validity of a sale, and directing the distribution of the fund arising therefrom,

on motion or rule to show cause—are precisely what the District Court did, and we do not think the motion was a case in equity, or the ruling of the court a decree in equity. It was the simple exercise of a power incident to courts of law, as well as of equity, to regulate the proceedings in a case pending before them, to regulate their own process and to distribute funds brought into court.

Our general view of the whole subject is this: The proceeding in bankruptcy, from the filing of the petition to the discharge of the bankrupt, and the final dividend, is a single statutory case or proceeding. In the conduct of the case a large number of questions may arise. Before the assets of the bankrupt can be collected and distributed, it will frequently occur that the assignee or the creditor is driven to a regular bill in equity, or an action at law. In these cases, the Circuit Court has no supervisory jurisdiction. Nor has it where the claim of a supposed creditor has been rejected in whole or in part, or where the assignee is dissatisfied with the allowance of a claim. These classes of cases may be taken up on writ of error or appeal. But all other cases and questions arising in the progress of a case of bankruptcy through the Bankrupt Court, whether the matter is of legal or equitable cognisance, and where the matter is not the subject of a regular suit at equity or at law, or is not the allowance or disallowance of a claim, fall within the supervising jurisdiction of the court, and may, upon bill, petition, or other proper process of any party aggrieved, be heard and determined in the Circuit Court as a court of equity.

We think the exceptions to the petition of review in this case not well taken; they are therefore overruled.

The appeal, we think, is not well taken, both because not taken in time and because the matter decided was not the subject of appeal. The appeal is therefore dismissed.

BRADLEY, J., concurred.

The decision appealed from in the foregoing case was rendered in open court, and was entered on the minutes on the 26th April, and it was copied into the opinion and judgment docket, and signed by the judge, on the 27th April. The appeal was taken on the 9th of May, and the motion to dismiss was on the ground that the Circuit Court had no jurisdiction of an appeal not taken within ten days after the entry of the decision appealed from.

The appellant contended that the delay for an appeal must be counted from

the date of the signing by the judge: that it was the intention of Congress to allow ten juridical days; that Sunday, the 1st of May, must be omitted, as *dies non juridicus*; and that Sunday, the 8th of May, being the tenth day, was also to be excluded by the express terms of section 48 of the Bankrupt Act.

Now, it is evident that, if Sunday is to be excluded, at any part of the term, simply because it is *dies non juridicus*, it must be excluded at every part of the term for the same reason. If it must be excluded when it is an intermediate day, the fourth day of the term, as in this case, because it is *dies non juridicus*, it must be excluded at the end of the term, when it happens to be the tenth day numerically. So that, upon the hypothesis of the appellant, Sunday never can be the terminal day.

By section 48 of the Bankrupt Act, Sunday, and certain other days of public rest, are to be excluded, when the last of any prescribed number of days, happens to fall on such day of rest. Congress, therefore, contemplated and provided for a contingency in which the last day might fall on such day of rest; a contingency which would be simply impossible if such day is to be excluded in any part of the term as *dies non juridicus*, not a day, in legal contemplation, and, therefore, not to be counted as one of the prescribed number of days. As the Congress thought it necessary to exclude, by the express provision of section 48, Sunday and certain other days of public rest, in the single exceptional case when the last day of the prescribed term falls on Sunday, &c., this is a clear expression of the legislative understanding and will, that Sundays and other days of public rest not being terminal days, are to be counted as any other days.

It must be presumed that Congress was not ignorant of the existing law, and knew that it was not necessary to declare, as is done by way of inducement in section 48 of the Bankrupt Act, that the computation of any number of days prescribed by the act shall be exclusive of the first and inclusive of the last day; because jurisprudence, state and national, had, long before, fixed that as the rule, in accordance with the Roman law, the law of Spain, of France, and of England: 4 Am. Law Reg. N. S. 222; 4 Washington C. C. 240; 1 Pick. 485; 3 N. H. 93; 4 N. H. 268; 2 Wallace 190.

The thing which it was necessary for the Congress to do, as it intended to follow jurisprudence in every other respect, in the computation of any prescribed number of days, the thing which was in the mind of the law-making power, was to fix the rule of computation when the last day of the term should happen to fall on Sunday, or the Fourth of July, or Christmas, or any day appointed by the President of the United States as a day of public fast or thanksgiving: and the declaration that the computation shall be exclusive of the first, and inclusive of the last day, a rule already perfectly understood and well established, about which there was no question, is merely the recognition and announcement of that rule, and inducement to the "RULE" which the Congress had in view, intended to adopt, and did adopt, exceptionally, by section 48, that when the last day falls on Sunday, &c., the time shall be reckoned exclusive of that day also. This rule is a departure from the general rule, established by jurisprudence, then and now existing; and is copied almost literally from the English rule of practice, adopted at Hilary Term, 2 William IV.

Without this latter clause of section 48, the computation would have been exclusive of the first day, the *dies a quo*, and inclusive of the last day, the *dies ad*

quem, without respect to the day of the week, or month, or year, on which the last day might happen to fall.

Jurisprudence, state and national, had established the general rule, that when a term is fixed, either by statute or by contract, within which something is to be done, and no provision is made, either by the statute or the contract, expressly excluding any day, the days of the term are to be taken consecutively, reckoned numerically; and, if the last day falls on Sunday, the thing cannot be done on the following Monday.

In *Pierpont* v. *Graham*, 4 Wash. C. C. 240, this rule was applied to a contract. An assignment had been made for the benefit of creditors, one of the conditions of which was that they should release the debtors within sixty days after the date of the assignment. The sixtieth day was Sunday; and Justice WASHINGTON, citing 1 Lord Raymond, 2 Rolle's Abridgment, and other English authorities, in support of his opinion, decided that the release executed on the following Monday was not in time.

By statute of Massachusetts, the lien formed by attachment on mesne process was limited to thirty days after the rendering of the judgment. The thirtieth day was Sunday, and the execution necessary to continue the lien was issued on the following Monday. The court said: "It is not for this court to extend the term; nor do we see any reason why the last day of the thirty should be excluded because it happens to be Sunday, rather than any or all the Sundays during the time limited:" 15 Mass. 226.

A statute of Pennsylvania allowed an appeal from the Court of Common Pleas to the Supreme Court, within twenty days after the rendering of the decision. The decision was rendered on the 12th April; the 18th and 25th were Sundays, and were included. The last day, numerically, was Sunday, the 2d of May; and the appeal taken on Monday, the 3d May, was maintained, the court deciding that the intermediate Sundays were to be included, and the terminal Sunday to be excluded: *Goswiler's Estate*, 3 Penna. 201.

In New York, where an appeal was to be taken within ten days, the tenth day was Sunday, and the appeal was taken on Monday, the court said:—

"When a statute declares an act shall be done within a certain number of days, Sunday must be computed as one, though it happens to be the last; and, in such a case, performance on Monday following will not be a compliance with the statute. Sunday has in no case been excluded in the computation of statute time:" 7 Cowen 147.

So, in *King* v. *Dowdall*, 2 Sandford, S. C. 132, where there was a delay of five days for an appeal from the decision of a justice, and Sunday intervened, the court said: "We know of no principle by which Sunday is to be excluded from the computation, when it is an intermediate day."

In Texas, the last day for filing an appeal bond was Sunday. The bond was filed on the following Monday. The court, dismissing the appeal, said: "Although courts, in construing their own rules, exclude Sundays, in construing a statute they do not, though it should be the last day:" 6 Texas 83.

See also 12 Iowa 186; 9 Indiana; and 7 Rhode Island, cases to the same effect.

In *Kilgour* v. *Miles*, 6 Gill & Johnson 268, the last day for the performance of a contract was Sunday; the court held that the delay expired on the preceding Saturday.

See the Rule stated in the same terms: Story on Contracts, § 971, p. 1072.

In *Salter* v. *Burt*, 20 Wendell 207, BRONSON, J., said, "In computing the time mentioned in a contract for the do-

ing of an act, intervening Sundays are to be counted; but when the day of performance falls on Sunday, it is not to be taken into the computation.

See also 2 Hill 375, and notes; Same 587; Story on Bills, § 338.

Parsons, Contracts, vol. 2, p. 666, lays down the rule thus: "If a contract is to be performed, or some act done, in a certain number of days, and Sunday happens to come between the first and last day, it must be counted as one day, unless the contrary be clearly expressed." See 8 Q. B. 380.

In *Bateman* v. *McGowan*, 1 Metcalfe (Ky.) 548, notice of contest of election must be given within ten days. The delay began on the 6th, and notice given on the 16th was held too late. So, the intervening Sunday was counted as one day.

"In computing the time of notices and Rules in Practice, intermediate Sundays are included and counted with ordinary week-days; but where the last day falls on Sunday, it is excluded, and the party has the whole of the following Monday:" 3 Chitty's General Practice 702. See also a case to the same effect in 11 East 271, which was a four days' rule to show cause, &c.

In *State* v. *Boyle*, 9 La. Annl. 371, the statute required, in capital cases, that a copy of the indictment and list of the jury should be served on the accused, *at least two entire days* before the trial. The service was on Friday, 23d April; and the trial was on Monday, 26th April. The court said the object of this statute was to enable the accused to confer with his counsel, and to have his witnesses summoned, which he could not do if Sunday was counted as one of the two days; and, in this special case, it was held that the two days must be juridical days.

By Statute 20 & 21 Victoria, Ch. 43, § 2, a delay of three days is allowed, in certain summary cases, within which the party dissatisfied with the decision, as being erroneous in point of law, may apply to the justice to state the case for review in the Court of Common Pleas. The third day was Sunday; and the application was on Monday following. The court said:—

"The statute giving three days, and saying nothing about Sunday being excluded, as in some of the Rules of Court, it must be reckoned as one of the three days. The appellee ought to have applied on Saturday." And BYLES, J., added: "Sunday at common law is like any other day:" 93 Eng. C. L. 265.

By the Louisiana Code of Practice, art. 318, Sunday is to be counted as any other day, except where it is expressly excluded. It is expressly excluded in the delay allowed for an appeal from the District Courts to the Supreme Court. It is not expressly excluded, and it is always counted as one of the ten days within which a party cited is to appear and answer. It is excluded by jurisprudence in the short delays, two days to confirm a judgment by default; two days allowed the accused in capital cases, after service of copy of indictment and jury list, before he can be put upon his trial; and three days allowed for a motion for a new trial, all of which must be juridical days.

By the Judiciary Act of 1789, § 23, Sundays are expressly excluded in computing the ten days within which a writ of error must be taken to operate as a supersedeas; and this was extended, by a subsequent Act of Congress, to appeals to the Supreme Court of the United States.

By the Roman law two days were allowed for an appeal, where the party managed his own case, and three days, where it was conducted by an attorney or other representative. By the 23d Novel, Justinian increased the delay to ten days, to be reckoned *a recitatione sententiæ*. In any case the *dies a quo*

was not counted, but the *dies ad quem* was.

"*Sed præter illum diem* (the *dies a quo*), *tres alios, arbitrio ejus qui dilationem impetravit, relictos esse.*" Voet ad Pandectas, Tome 1, p. 153, No. 14. See also Spanish law, Ilustracion á la Curia Philipica, Tom. 1, part 1, § 16, No. 5; French law, Sirey & Villeneuve, 1834, part 2, page 357; 3 J. J. Marshall (Ky.) 202; 1 Blackford 392; 4 Wash. 240; 2 Wallace 190, for the American Rule; and 1 Lord Raymond 280, 2 Roll. Abridgment 520, pl. 5, for the English Rule, the same as that of the Roman law.

In computing delays the days were taken consecutively, sacrificial days, holidays, *dies non juridici*, being counted with the others:—

"*Cæterum continua sunt dilationum tempora, connumeratis etiam diebus feriatis.*" Voet, *ut supra.* "*Feriæ autem, sive repentinæ sive solemnes sint, dilationum temporibus non excipiantur, sed his connumeratis.*" Cod. Lib. 3, tit. xi. l. 3.

So, in the Spanish law, as far back as the time of Alfonso the Wise, 1222 to 1284: *En el tiempo de los plazos, que los omes han para alçarse é para seguir sus alçadas, tambien denen y ser contados los dias feriados, como los otros.*" Las Siete Partidas, Ley 24, part 3, tit. 23. See also Tapia, Febro. novismo. tom. 4, lib. 3, tit. 2, ch. 2, p. 279.

There is also a Latin version of this law 24 of the Partidas, not a literal translation, rather a paraphrase, by Gregorio Lopez, as follows:—

"*Tempora a judice assignata ad persequendum appellationem sunt continua, in quibus computantur dies feriati.*"

If the last day, the *dies fatalis*, *dies temporalis*, fell upon a holiday, or any *dies non juridicus*, the preceding day was to be observed as the last day:—

"*Si forte temporales in feriatos dies quoquo modo inciderint præcedentes eos dies, ut temporales a litigantibus observentur.*" Cod. lib. 7, tit. 63, l. 2.

In the old French law, anterior to the Code Napoleon, the Rule was, as stated by Dénisart, in his Collection of Jurisprudence, to include Sundays and holidays:—

"*Dans les délais pour les assignations même pour le payment des lettres de change, les jours de dimanches et fêtes solennelles, se computent.*" Ap. Verb. "Délai."

In the present French law, under the Code Napoleon, the rule is the same; even terminal Sundays being counted. See Sirey & Villeneuve, 1849, part 2, 415.

A delay of eight days was allowed for filing an opposition to a judgment by default. The last day was Sunday, and the opposition filed on the following Monday, was held to be too late.

"*La loi ne distingue pas entre le cas où le dernier jour est bien un dimanche, pour excepter le cas de la règle générale.*" Journal du Palais 10, p. 210. Ibid. 546.

In a prosecution for theft, there was judgment on the 14th May. Ten days were allowed within which an appeal might be taken. The 24th was Sunday; and the appeal was taken on the 25th, Monday. It was urged that the clerk's office was closed on Sunday; but the court held the rule imperative, and dismissed the appeal. Jour. du Pal. 10, 697.

Three days were allowed within which an appeal might be taken from the judgment of a justice. The judgment was rendered on the 7th September. Sunday was the 10th; and the appeal was taken on the 11th, Monday. It was dismissed, not being in time. Jour. du Pal. 23, 506. See also Jour. du Pal. 46, 544.

No one supposes that Sundays are to be omitted in counting the 30, or 60, or 90 days after date, in bills of exchange and promissory notes; and where the third day of grace falls on Sunday, the

preceding Saturday is the last day, and protest on Monday would be too late.

It would be difficult to find rules so general, so well established by authority in Europe and America, in ancient law and in modern law, as those regulating the computation of any number of days prescribed by statute. In the short delays of less than a week, in some of the states, Sundays are not counted. In conventional delays, it is held, in New York, that if the contract be one not entitled to days of grace, the terminal Sunday is not counted. In Pennsylvania, where the last day for an appeal fell on Sunday, the appeal taken on the following Monday was held to be in time. In some of the Rules of Court, Sundays are wholly omitted, while in others the terminal Sunday only is excluded, in computing delays. But, with these exceptions and modifications, the general rules of computation may be thus stated :—

1. Where an act is to be done within a certain number of days, the day from and after which the act is to be done, is excluded, and the day on which the act is to be done, the last day, is included.

2. The days are to be counted consecutively, including intervening Sundays, &c., except where such days are expressly excluded.

3. Where the law has not otherwise expressly provided, if the last day, numerically, falls on Sunday, &c., the preceding Saturday, &c., must be observed as the terminal day.

Sections 8, 11, 13, 14, 27, 29, 39, 40, 42, of the Bankrupt Act, and Rules of Court 13, 21, 23, 24, 26, prescribe various terms of delay, 3, 5, 7, 10, 14, 20, 60, 90 days. In each and all of these cases the number of days is mentioned in the same way, so many days without qualification, and without reference to the omission or exclusion of any day. If intermediate Sundays, &c., are to be excluded in the computation of the ten days within which an appeal is allowed by section 8, then all the Sundays, &c., which may occur in the other delays, 3, 5, 7, 10, 14, 20, 60, 90 days, must also be excluded. There is nothing to distinguish the ten days within which an appeal must be taken, from the ten days within which the register is required, by section 27, to prepare a list of creditors; or the ten days within which the assignee is required to give bond, by section 13; and so, with respect to all the prescribed numbers of days. "Ten days" can mean nothing else than ten periods of 24 hours each; and where the statute says "ten days," without qualification or restriction, the courts have no right or power to exclude Sundays, &c., and thus to extend the prescribed period beyond the limitations of the law.

No part of the Bankrupt Act refers to the mode of computing any prescribed number of days except section 48; and, as one of the avowed purposes of this section is to fix the computation of time, the conclusion is irresistible that the Congress has, in this section, established all the exclusions which were contemplated, or intended to be allowed; and, that, so far as Sundays, &c., are concerned, the exclusion is exceptional, limited to the one single contingency mentioned, when such day happens to be the last day, numerically, of the prescribed number of days.

An appeal, therefore, is not in time, according to sections 8 and 48, and Rule 26, unless it is taken within ten consecutive days, as they come in the calendar, after the entry of the decision appealed from, excluding the day of the entry, and including the last day, except in the single case in which the last day falls on Sunday, &c., a contingency expressly provided for in section 48, the only part of the Bankrupt Act which authorizes the exclusion of any day in the computation of time.

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